



Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#16

Application of: Scribner et al.

Examiner: P. Philogene

Serial No. : 09/804,107

Group Art Unit: 3732

Filed : March 12, 2001

For : Systems and Methods for Placing Materials into Bone

**TERMINAL DISCLAIMER TO OBVIATE
A DOUBLE PATENTING REJECTION**

Commissioner of Patents
and Trademarks
Washington, D.C. 20231

Sir:

I, Daniel D. Ryan, Esq. (Registration Number 29,243), state that I am attorney of record in the above identified patent application (which I will call the '107 Application). The '107 Application is a divisional of U.S. Application Serial No. 09/134,323, Filed August 14, 1998, now U.S. Patent 6,241,734.

I further state that Kyphon Inc. is the assignee of the whole invention claimed and described in U.S. Patent 6,241,734 and the present '107 Application. The assignment of the U.S. Application Serial No. 09/134,323, now U.S. Patent 6,241,734, the parent of the present '107 Application, by the inventor to Kyphon Inc. is recorded in the United States Patent Office on Reel/Frame 9757/0854, a true copy of which is attached. As a result, U.S. Patent 6,241,734 and the present divisional '107 Application

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Serial No. 09/804,107
Terminal Disclaimer

are commonly owned by Kyphon Inc.

With respect to claims granted in the '107 Application, Kyphon Inc. hereby disclaims the terminal part of any patent granted which would extend beyond the expiration date of the full statutory term of U.S. Patent 6,241,734.

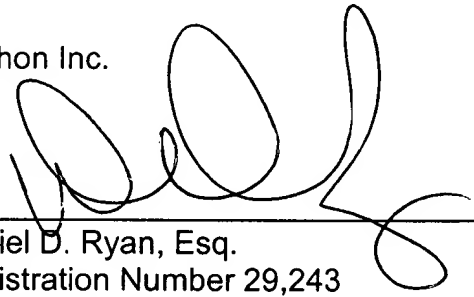
Kyphon Inc. hereby agrees that any patent granted on the '107 Application shall be enforceable only for and during such period that the legal title to such patent shall be the same as the legal title to U.S. Patent 6,241,734. This agreement shall run with any patent granted on the '107 Application and shall be binding upon the grantor, its successors, or assigns.

Kyphon Inc. does not disclaim any terminal part of any patent granted on the '107 Application prior to the expiration date of the full statutory term of U.S. Patent 6,241,734 in the event that U.S. Patent 6,241,734 later: (1) expires for failure to pay a maintenance fee; (2) is held unenforceable; (3) is found invalid; (4) is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321(a); (5) has all claims canceled by a reexamination certificate; or (6) is otherwise terminated prior to expiration of its statutory term, except for the separation of legal title as stated above.

Serial No. 09/804,107
Terminal Disclaimer

Pursuant to 37 C.F.R. 3.73(b), I hereby state that the evidentiary documents accompanying or referred to in this Terminal Disclaimer have been reviewed by the undersigned, and it is certified that to the best of the assignee Kyphon Inc.'s knowledge and belief, title is in the assignee. I also state that I am authorized by Kyphon Inc. to make this Terminal Disclaimer on its behalf.

Kyphon Inc.

By: 
Daniel D. Ryan, Esq.
Registration Number 29,243
Attorney of Record

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